

**Basis for Amendments to Claims**

Applicants have amended Claims 1 and 34 by incorporating limitations from dependent Claims 24 and 25 into those independent claims.

No new subject matter is introduced by these amendments as the additional limitations which are added to independent Claims 1 and 34 were contained in dependent claims already present in the claims of the application. In addition, because Applicants have merely combined claims, no additional search is necessary.

**Power of Attorney**

Please note that a new Power of Attorney was filed for this application on June 10, 2009. Please send all future correspondence concerning this application to Scott R. Cox at the address associated with Customer Number 68072.

**Claim Rejections based on Hekal in view of Simpson, et al.**

The USPTO rejected all remaining claims of the application based on Hekal (EP 0 824 480) in view of Simpson, et al., U.S. Patent No. 6,000,550. Applicants respectfully traverse this rejection.

The invention relates to a unique container that can be closed with particular tightness with respect to moisture. The container is designed for the packaging of products sensitive to ambient moisture. The container utilizes a unique sealing system to seal the cap lid to the tubular casing. The unique sealing system creates at least four tightness barriers that are formed between the cap lid and the tubular casing. This level of tightness is unique and results from the specific structure of Applicants' container, which structure is not disclosed by the prior art.

To enhance this tight seal between the tubular casing and the cap, the cap lid contains a unique structure which is claimed in all claims of the application, as amended. In addition, based on this unique structure, the lid, which is separately formed, can easily be brought into position for securing to the tubular casing by a simple vertical movement, i.e. by simple movement in a longitudinal direction of the tubular casing. This easy system for joining the cap to the tubular casing is unique and is not disclosed by the prior art

and is not possible from the structure disclosed in the cited prior art.

**Discussion of EP 0 824 480 in view of Simpson, et al.**

The primary reference cited against the patentability of the claims of the Application is EP 0 824 480. In fact, the scope and focus of EP 0 824 480 are distinct from that of the Applicants' claimed container. The disclosure of EP 0 824 480 is focused on the composition of the container and not its structure. Note throughout the specification of EP 0 824 480 the failure to even describe the precise structure of the components of his container.

In the Office Action the USPTO asserts that the structure of the sealing means, as claimed by Applicants, is disclosed by EP 0 824 480. The Office Action specifically references a disclosure of an inner wall 74, outer wall 87, and other features of the container that are disclosed in the figures attached to EP 0 824 480. However, the written specification of EP 0 824 480 fails to describe the structure, purpose or operation of these components at any location within EP 0 824 480. The disclosures made by Figure 1 of EP 0 824 480 may suggest certain structural features that might be useful for the forming of a container. However, the written specification fails to describe with clarity and the required specificity the

exact structure that is claimed by the container of Figure 1. In fact, the written specification of EP 0 824 480 is silent as to too many of the features that are shown in the drawings attached thereto. A person skilled in the art would not be taught by EP 0 824 480 to produce a container with the features specifically claimed by Applicants.

In response to this assertion the USPTO argues that the exact structure of the device of EP 0 824 480 is shown in Figure 1 thereof. Applicants respectfully assert that several elements of the invention, notably the requirement of four separate tightness barriers that are formed between the cap lid and the tubular casing, are neither disclosed, taught nor suggested by EP 0 824 480. Rather, EP 0 824 480 merely disclose a generic cap and lid system. Applicants respectfully assert that the specific design of Applicants' cap and lid system, as claimed, is distinct from that of EP 0 824 480.

Applicants also respectfully assert that the hinge portion of Applicants' claimed container is entirely distinct from what is disclosed by Simpson, et al. in combination with EP 0 824 480. Clearly the hinge system disclosed by EP 0 824 480 is entirely different from that of Applicants' invention. The hinge system of EP 0 824 480 comprises a one-part molding of a combination of the cap and the tubular container and does not utilize the two-part system disclosed in either Simpson, et al.

or the Applicants' invention. Further, there is no suggestion that the hinge system of EP 0 824 480 should be modified in any fashion to utilize the two part system that is disclosed by Applicants' invention. In fact, the use of a two-part system contrasts significantly with the one part system of EP 0 824 480. Thus, the teachings of EP 0 824 480 teach away from those of Simpson, et al.

In addition, the hinge system of Applicants, as claimed, is different from that disclosed by Simpson, et al. For example, Simpson, et al. require the presence of channels (48 and 50) for receiving portions (36, 38) of the arms (32, 34) of the hinges. No such channels exist in Applicants' invention. Applicants have discovered a better system, which is easier to assembly and easier to produce utilizes end sections (19) which snap into orifices (18) to secure the cap to the tubular casing.

This structural distinction is important and not merely decorative. It performs a substantive function. In order for the cap of the box of Simpson, et al. to be secured to the bottom of the box requires placement of the cap (10) in relation to the bottom (30) in a very specific position, as shown in Figure 1A. In no other position can these two components be joined together to form the box because of the need to line up the channels in a specific orientation. This is

a complicated and time consuming methodology made difficult by the structure of the hinge system of Simpson, et al.

In contrast, in order to mount the lid to the container body of Applicants' invention, a simple vertical movement of the cap onto the tubular casing is all that is required.

In addition, Simpson, et al. requires a camming surface (70), which is required to be flat and smooth and located a specific and precise distance away from the lid in order for the cap to be secured to the bottom of the container. Without the specific and precise location of the camming surface (70), the cap can not be joined with the bottom portion of the container. No such camming surface is an element of, nor is it required by, Applicants' invention. Thus, this feature further distinguishes Applicants' invention and makes it simpler to operate than the system designed by Simpson, et al.

Finally, the location and shape of the system of the cap and housing of Simpson, et al. is actually the opposite of what is shown for Applicants' invention. This choice of structure is also not merely a matter of style but has substantive significance because the system designed by Applicants for the joining of the cap with the tubular casing is quite easy to assemble and operate.

The USPTO has previously determined that obviousness is not proven when the primary prior art teaches away from the

secondary art that has been combined therewith. In making this determination, the USPTO recognized the obviousness rational which was adopted by KSR Int'l Co. v. Teleflex, Inc., 127 F.3d 1727, 1741 (2007). KRS noted that obviousness can not be proven merely by showing that the elements of the claimed device were simply known in the prior art. Rather, as stated by the USPTO in Ex Parte Whalen, 89 USPQ 2d 1078, 1084 (2008),

...it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed".

Ex Parte Whelan further states that,

...obviousness can not be proven merely by showing that a known composition could have been modified by routine experimentation or solely on the expectation of success; it must be shown that those of ordinary skill in the art would have some apparent reason to modify the known composition in a way that would result in the claimed composition.

It is clear that no such "apparent reason" exists for modifying the simple, mass produced, single injection molded hinge that was utilized by EP 0 824 480 with the totally unrelated, multicomponent hinge that is disclosed by Simpson, et al. In fact, EP 0 824 480 teaches that the use of a simple

hinge is preferable because all components of its system are required to be made of the same material and joined in a single injection molding process. (See paragraph 0011) EP 0 824 480. Further, because all components of the container of EP 0 824 480 are formed from this same desiccant entrained thermoplastic material, it is critical that the container be produced in a one step injection molded system. Thus, a person skilled in the art reviewing EP 0 824 480 would not be taught to consider a hinge systems formed of at least two separate components, such as is necessary to produce the more complicated hinge structure that is disclosed by Simpson, et al.

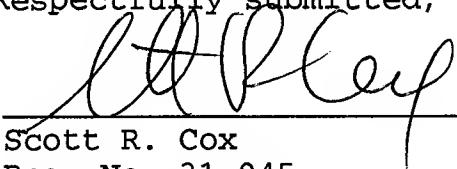
**Withdrawal of Final Rejection**

Applicants respectfully assert that a number of the claims of the application were and are distinctive from the invention. Further, all of the amendments to the claims are based on subject matter previous present in the claims. Therefore, review of this Amendment does not require any additional search by the Examiner and thus it should be considered. Applicants further assert that the distinctions pointed out in this Amendment were not considered by the Examiner when the final Office Action was issued. Accordingly, Applicants respectfully request for withdrawal of the final rejection and consideration of this Amendment.

**CONCLUSION**

Applicants believe that the claims, as amended, are distinctive over the cited prior art and request review and allowance by the USPTO. If there are any questions, please contact Applicants' counsel.

Respectfully submitted,

  
\_\_\_\_\_  
Scott R. Cox  
Reg. No. 31,945  
Customer No. 68072  
LYNCH, COX, GILMAN & MAHAN, P.S.C.  
500 West Jefferson Street, Ste 2100  
Louisville, Kentucky 40202  
(502) 589-4215

Dated: August 20, 2009

**CERTIFICATE OF EFS SUBMISSION (37 C.F.R. § 1.8(a)(i)(1)(C))**

I hereby certify that, on the date shown below, this correspondence is being submitted to the Patent and Trademark Office via the Office Electronic Filing System in accordance with § 1.6(a)(4).

Date: August 20, 2009

  
\_\_\_\_\_  
Signature